FREEDOM OF INFORMATION ACT (FOIA) OVERVIEW

The Public’s Right to Federal Records

Introduction

- Enacted in 1966
- Members of the public have the right to request access to federal agency records or information.
- The FOIA provides public access to all federal agency records except for those records (or portions of those records) that are protected from disclosure by any of nine exemptions (reasons for which an agency may withhold records from a requester).

The Nine Exemptions

1. Classified national defense and foreign relations information,
2. Internal agency rules and practices
3. Information that is prohibited from disclosure by another law
4. Trade secrets and other confidential business information
5. Inter-agency or intra-agency communications that are protected by legal privileges
6. Information involving matters of personal privacy
7. Certain information compiled for law enforcement purposes
8. Information relating to the supervision of financial institutions
9. Geological information on wells

Who Does The FOIA Apply To?

- All Federal agencies

- The FOIA does not apply to Congress, the courts, or the central offices of the White House, nor does it apply to records in the custody of state or local governments. However, all state governments have their own FOIA-type statutes. You may request details about a state's records access law by writing to the office of the attorney general of that state.

Who Does The FOIA Apply To?

- The FOIA does not require a state or local government, a private organization or a business to release any information directly to the public, whether it has been submitted to the federal government or not.

- However, information submitted to the federal government by such organizations or companies may be available through a FOIA request if it is not protected by a FOIA exemption, such as the one covering trade secrets and confidential business information.

How to make a FOIA request

- In writing
- Required within request:
  - Clear and specific description of the record sought.
  - A statement of willingness to pay processing fees and the maximum dollar amount you're willing to pay, or a request for a fee waiver with justification.
  - A U.S. Postal mailing address

Time Limits

- Upon receipt of a request, an acknowledgement letter must be sent within 3 working days unless the agency can fully respond to the request within 20 working days.
- Agency must fully respond within 20 working days from receipt unless an extension is approved.
- Clock starts when the request is perfected (meaning content complies with agency policy regarding required elements).

Time Extensions

- An agency may extend the 20 day limit for an additional 10 working days without consent of requester for unusual circumstances. The requester must be notified in writing of the extension and the reason for it.
- Unusual circumstances: When search and collection of records involve multiple offices; the amount of records for review is voluminous; or the need to consult with another agency prior to release exists.
- If extension required is more than 10 working days, the requester is contacted in order to give them an opportunity to modify the request, narrow the scope, and/or arrange an alternative time frame.

Requester Categories and Processing Fees

The FOIA permits agencies to charge processing fees
to FOIA requesters as indicated below:

- Clerical hours (E9/GS-8 below)
  $20/hr
- Professional hours (01-06/GS9-GS15/Contractor)
  $44/hr
- Executive hours (07-ES1 and above) $75/hr
- Copies $.15 per page

Requester Categories

- Category I: Commercial (businesses & law firms).
  Search, review and duplication charges apply

- Category II: Educational and noncommercial scientific institutions (schools & nonprofit environmental organizations).
  Duplication fees only, the first 100 pgs free

- Category III: News Media.
  Duplication fees only, the first 100 pgs free

- "All others" – Noncommercial requesters (individuals & Indian tribes). Search and duplication fees only, the first 2 hrs of search & 100 pgs free

Denial/Partial Denial Decisions

- If responsive records are located, they can be withheld (or any portion thereof) if they fall under any of the nine FOIA exemptions listed earlier.
- For records that contain portions of information that is withheld, those portions will be excised and clearly marked in the space with the applicable FOIA exemption number.
- If a request is denied, in whole or in part, an estimate of the amount of material withheld, the reason(s) for the denial, and appeal rights will be included in the response letter.

Appeals

- Must be made within 60 days from the date of the denial letter to the appropriate appeal authority.
- Must provide the reason why it is believed the decision was wrong.
- Must include copies of the original request and the agency's denial letter.
- The appeal authority has 20 working days to decide on the appeal. Under certain circumstances, the deadline may be extended by up to 10 working days.

President Obama's Open Government Policy

- "A democracy requires accountability, and accountability requires transparency."
- "In the face of court, openness prevails." Information should not be kept confidential merely because officials may be embarrassed, errors/failures might be revealed, or due to speculative or abstract fears.
- "Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve."
- "Strongly encourages discretionary disclosures of information."

President Obama's Open Government Policy

- "Unnecessary bureaucratic hurdles have no place in the 'new era of open Government.'
- Each agency is fully accountable for its administration of the FOIA. All agency employees are responsible for the FOIA, not just those who interact directly with the FOIA requester.
- "Make it a priority to respond in a timely manner."

Summary

- New standards for responding to requests.
- New, more limited defensibility standard for withholding records.
- New requirement to maximize use of technology to disclose information.
- New requirement to anticipate interest in records and post information online affirmatively, in advance of FOIA requests.

Summary

- Presumption of disclosure applies to all decisions involving FOIA.
- Records should not be withheld merely because they technically fall within an exemption.
- When full disclosure is not possible, consider what can be made available from the responsive records.
- Work cooperatively with requesters, respond promptly.
- The commitment of all agency personnel is required to achieve the “new era of open Government.”

Questions About FOIA?

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